

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Robert McCluskey,
Plaintiff

v.

Civil No. 05-cv-52-SM

PrimeCare Medical, Inc.;
Rockingham County;
Rockingham County
Department of Corrections;
Superintendent of the
Rockingham County
House of Corrections;
Josephine M. Meador, MD;
Jonathon Jaffe; and
John and Jane Does,
Defendants

ORDER OF RECUSAL

This is a civil case in which a former federal inmate at the Rockingham County correctional facility asserts that he was the victim of medical mistreatment.

During the course of the underlying federal criminal case, the magistrate judge expressed, on the record, his shock and anger with regard to the obvious and dramatic physical deterioration of the defendant (now civil plaintiff) while in custody. The magistrate judge stated: "I'm furious," and ". . .

I have already indicated to Judge McAuliffe exactly the degree to which this gentleman's deteriorating. I find it shocking."

While I have no current memory of anything the magistrate judge might have said about McCluskey's condition, I take the magistrate judge at his word. And, as I explained to counsel in this case, at a pretrial conference, I presided over the underlying criminal case, and I too found McCluskey's physical appearance, or more precisely, the dramatic change in his physical appearance, to be quite disturbing. I also heard and credited testimony from McCluskey's treating physician during sentencing, and I read the physician's report in which he bluntly stated that the medical staff treating McCluskey "damned near killed him with the most egregiously poor care delivered in this country since George Washington died of a combination of strep throat and his physicians' ministrations." - a rather dramatic explanation by an expert of the change in physical condition that was undeniable. See letter dated June 12, 2003, from Paul J. Harper, M.D., F.A.C.S. to Jonathan Saxe, Esq., United States v. McCluskey, 03-cr-034-SM.

Under these circumstances, counsel for defendants understandably prefer that a judge not directly involved in the underlying criminal case preside over the civil follow-up. I agree.

Having heard and credited damning testimony from McCluskey's physician about the substandard medical care he received at the Rockingham facility, and having granted relief in his criminal case in part based upon the circumstances described, it is perfectly reasonable for defendants to prefer another judge. While I am not certain that defendants actually raise a disqualifying issue under the applicable statutes and Code, nevertheless, I prefer to err on the side of recusal, as another judge can easily assume this case, with relative caseloads adjusted accordingly, and defendants can go forward without worrying about the possible impact of earlier testimony in the criminal case.

Accordingly, I hereby recuse myself from this case. The clerk shall reassign it to another district judge.

SO ORDERED.


Steven J. McAuliffe
Chief Judge

June 15, 2005

cc: Lawrence A. Vogelmann, Esq.
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